8: Lužbetak E-4 (no date) 1951 RH1 Caucasia RH1

the couple does not become acquainted with one another till their wedding day.[48] In Khevsuria the girl used to move into the house of her future father-in-law before her marriage, and there she would take part in the family work for three to fourteen days, but all this time she was not allowed to associate with anyone except the female members of the family. After that she returned to her own household and lived there for two weeks at least (sometimes two or three years), during which time she was not allowed to meet her lover. In fact, he was even forbidden to enter her village.[49] In Pshavia, as we have seen above (p. 105), the engaged couple is allowed to meet frequently.

The obligation of mutual avoidance is also observed by the neighbouring OSSETES.[50]

In this regard the neighbouring TARTARS do not differ either. The Kumyk may visit his future wife only privately and is strictly forbidden to speak to her in the presence of others.[51] The Karachai suitor is forbidden to speak not only with his beloved but also with his future parents-in-law.[52]

2. Mutual Fidelity

The *adats* of the North Caucasians do not tell us whether the obligation is bilateral or not. The female partner, of course, is strictly bound to fidelity as will be clear from our exposition of the proof of virginity demanded of the bride on her wedding night *(infra*, p. 124) and from Chapter XII on sexual violations.

3. The Obligation of Entering upon Marriage

Islamic law gives both parties the right to dissolve the engagement at will.[53] It will be interesting to find out whether in this particular case the *adats* are observed or the *šarī'a*.

The NORTHWESTERN CAUCASIANS. The "Collection of adats for the Black Sea-Cordon Line, Kuban and Terek Territories" (§ 195) informs us that "the man has a right to break his engagement at will; and, at the request of his fiancée or her relatives, he may permit the girl to withdraw her promises."[54] This adat clearly shows that the obligation is unilateral. "The girl [or her family] may not break the engagement without her fiancé's consent."[54]

The NORTHEASTERN CAUCASIANS. The following table will give us a good idea of the Chechen *adats*.

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[48] Dubrovin, *Istorija*, I, ii, p. 309.

[49] M. O. Kosven, "Peržitki matriarchata u narodov Kavkaza," SE, 1936, No. 4–5, p. 216.

[50] Dubrovin, *Istorija*, I, i, p. 333; Byhan, *op. cit.*, p. 212.

[51] Dubrovin, *Istorija*, I, i, p. 638.

[52] Byhan, *op. cit.*, pp. 245 f.

[53] Juynboll, *op. cit.*, p. 163.

[54] Leontovič, II, p. 257, § 196.

8: Lužbetak E-4 (no date) 1951 RHI Caucasia RHI

dissolutions of the marriage bond, the husband forfeits the *kalym*, while the wife, on her part, must return it to the man she unjustifiably abandons.[12] On the other hand, if the husband has sufficient grounds for a divorce, the *kalym* must be refunded; or if she justly abandons her husband, she need not return it. Legal grounds for a woman are impotency of the man for over a year and cruelty,[13] whereas a man (at least among the Temirgoi) may divorce his wife for disrespectfulness toward her parents- oder brothers-in-law or laziness.[14]

The wife never has a right to any special alimony. In case of divorce, she may take her personal property along, that is, personal gifts, and if the divorce was not justifiable, her *kalym*. She never receives additional support, except if she has a child less than a year old, in which case she is given, in addition, 10 *puds* of flour, 10 *puds* of millet, and not more than two sheep.[15]

The children always remain with the father. If one of the children is less than a year old, the mother may keep the child and nurse it till its second year, when it must, without delay, be returned to its father's family.[16] Since divorce is relatively frequent, in some Cherkess families we find children of two, three, or even more, different mothers.[17]

A Cherkess and Abkhazian divorcée is free to re-marry, provided the regulation regarding the *kalym* has been carried out.[18]

If the partners wish to reunite after a divorce, they can do so only if a marriage with another person and a subsequent divorce intervened. The intermediate marriage and divorce may have taken place only an hour before the re-union, it matters little. They are nevertheless indispensable. Of course, the "re-union" is more than a mere re-union; it is actually a second marriage between the same partners.[19] This practice evidently is of Islamic origin.

The NORTHEASTERN CAUCASIANS. The divorce regulations of the Chechens are much the same as those of the Abkhaz and Cherkess, but, owing to their greater isolation and slower acculturation, the divorce rights of the female partner have not reached the advantageous level of the Northwesterners.

In pre-Soviet times, a husband had far greater rights to dismiss his wife than a wife had to abandon her husband., A husband might validly divorce his wife at will, but his wife was not allowed to abandon her husband without first having received his consent.[20] Or again, as another *adat* has it: the infidelity of a wife is considered sufficient grounds for dismissal, but the infidelity

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[12] *ibid.*

[13] *ibid.*

[14] Vasil'kov, *l. c.*

[15] Ladyženskij, FT, p. 203.

[16] *ibid.*

[17] Vasil'kov, *op. cit.*, p. 102.

[18] Byhan, *La civilisation caucasienne*, p. 155.

[19] Ladyženskij, *op. cit.*, p. 199. This is a typically Islamic custom, cf. Koran, ii, 230. Cf. Juynboll, *op. cit.*, pp. 229—232; also, A. Gren, "Kratkoe izloženie Šariata," *Terskij Sbornik*, III (1892), No. 2, Part 2, p. 16.

[20] Leontovič, II, p. 170, § 123; p. 175, § 160. "§ 123 ... žena na razvod prava ne imeet, bez soglasija muža. Mužu že dozvoljaetsja razvod vo vsjakoe vremja, ne sprasivaja soglasija ženy."

of a husband never justifies a wife to divorce him.[21] In fact, the inequality was even far greater: although a husband's wilful act of adultery was not sufficient grounds for a divorce, rape suffered by an innocent wife was.[22] Other legal grounds for a divorce were sterility of the wife or the fact that she was "capable" of giving birth only to girls,[23] which is but another form of "sterility."

A divorcée has no right to a special alimony. Instead, she has her own personal property and especially her *kebin*.[24]

If a wife abandons her husband for any reason other than the few legal grounds granted her, she not only must return all engagement and wedding gifts received from her husband, but her family must also return the entire *kalym*. In fact, she may not re-marry till the *kalym* is refunded. Sometimes the husband out of mere malice refuses the *kalym*, so that the divorcée must remain unmarried for the rest of her life.[25]

The children remain in the father's household, even if he should soon die after the divorce,[26] the guardianship always remaining in the male line.

According to Lesghian customary divorce laws, which, on the whole, are in harmony with the *šarī'a*,[27] the female mate is again at a disadvantage. An *adat* for North Tabassaran says that "the husband has the right to divorce his wife at any time... But a wife may abandon her husband only if he is impotent, or if he has a contagious disease, or, finally, if he is unable to support her."[28] The disadvantage lies in the restricted legal grounds justifying the women to abandon their husbands and the almost unlimited possibilities of a justified divorce of the men. However, the expression "at any time" in this *adat* is an exaggeration. If a husband divorces his wife unjustifiably, he must pay the sum promised (*kebin*) and forfeits the *kalym*. If the wife abandons her husband for any other reason than the three grounds enumerated, she loses her right to the *kebin* and her family is obliged to refund the *kalym*.[29] Of course, if the husband is willing to pay the *kebin* and lose his right to a refund of the *kalym*, he may divorce her, literally, at any time.

Another occasion for divorce is the so-called *khatun-tallkh*. It is a common form of oath in Daghestan, which only a married man can take. The husband declares himself ready to dismiss his wife if he swear falsely. If he has several wives, he must specify which wife he will dismiss in case of perjury.

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[21] Leontovič, II, p. 173, §§ 150, 152.

[22] Leontovič, II, p. 172, § 143.

[23] Grabovskij, "Ekonomičeskij i domašnij byt, etc.," p. 21.

[24] Leontovič, II, p. 169 f, § 119; p. 176, § 172. The special decision of 1862 in this regard seems to be an imitation of the Islamic *kebin*.

[25] Leontovič, II, p. 175, § 166: "čtoby razvedennaja žena ne byla 'ni ema, ni drugoma.'" See also Grabovskij, *op. cit.*, pp. 51 f.

[26] Grabovskij, *op. cit.*, p. 53.

[27] Kovalevskij, *Zakon*, II, pp. 199 f.

[28] "Adaty Južno-Dagestanskich Obščestv," SSKG, VIII (1873), pp. 32. Kovalevskij, *Zakon*, II, p. 199.

[29] "Adaty Južno-Dagestanskich Obščestv," *l. c.*

[among the Northeaste: Caucasians-- Analyst]

8: Lužbetak E-4 (no date) 1951 RHI Caucasia RHI

the person raped is a minor or an adult: blood-enmity or bloodwite of Rs. 250 (AJuDO, p. 9).

(14) If the adulteress escapes, she becomes the blood-enemy of her husband as well as of her own family. The same holds for her lover. The offended husband is allowed to kill his wife and spare the adulterer, but not vice versa, without becoming a *qanly*. In case of fornication, if both partners are not killed, they have the strict obligation of marrying or else become outcasts and are banished (AJuDO, pp. 43 f).

(15) If a man is accused of adultery and fails to justify himself by an oath taken together with 40 conjurors, the adulteress may be killed by her husband. If a husband decides to kill his adulterous wife, her lover automatically becomes a blood-enemy. The adulterer can choose to pay a bloodwite of Rs. 60 and a fine of six head of cattle instead. The fine is paid to the district (AJuDO, p. 26). If the father of a girl insists, the man who had intercourse with her must marry her, otherwise he must pay a fine of six oxen and becomes a blood-enemy of the girl's family (AJuDO, p. 26). The penalty for raping a widow is three head of cattle. If the woman attacked is married, the offender becomes a blood-enemy if he fails to justify himself by an oath taken together with 40 conjurors (Cf. AJuDO, p. 26).

(16) The adulteress may be divorced (ADOiZO, p. 548, § 19; Dirr, AGKB, p. 75). If the offended husband makes use of this right, the adulterer must pay a bloodwite and is banished for 20—30 days (*ibid.*).

(17) The fornicators are obliged to marry, otherwise they may be killed by the girl's family. Anyone who rapes a girl, widow, divorcée, or a married woman is obliged to marry her, otherwise he too may be killed (AJuDO, p. 48).

In pre-Russian times it was sufficient if the husband had learned by mere hearsay that his wife had been unfaithful: he could at once inflict the death-blow without further investigation.[27] Although during the Russian occupation the right to kill one's adulterous wife still existed (namely, if the wife had been caught in the act or if she had fled with her lover on being detected, or if she had been found guilty by the people's court), the husband seldom made use of his right. A wife was generally divorced, and as compensation, the offended husband kept all her property.[28] We say that she was "generally" divorced, for, if we go through the various criminalogical reports of the Russian (pre-Soviet) times, we find not a few cases where the right to kill has been actually made use of. To mention but a few of these official reports: "December 28, 1869, a citizen of the aul Orot, of the Province of Avaria, by the name of Gamzat Labazan-ogdy, stabbed his brother to death because Ali (his brother) had committed adultery with Gamzat's wife, whose name is Patimat Mutalilov-kizy."[29] Or again, "December 12, 1869, a native of the aul Arsug... having caught his wife, Kifi Rodzheb-kizy, in an adulterous union with his co-villager, Ramazan Adzhab-Palay-ogdy, killed her with the help of her own kinsman, Dzhabrank Tseyd-ogdy."[30]

The Lesghians love to repeat the ballad of Nika Bulat. It is a tragic tale indeed, but a tale that clearly conveys the deep conviction of these mountaineers of the heinousness of adultery. Nika Bulat, we must remember, was a righteous

[27] Kovalevskij, *Zakon*, II, pp. 195 f.

[28] Similar changes are noticeable throughout the Caucasus.

[29] "Iz gorskoj kriminalistiki," SSKG, III (1870), p. 19.

[30] *ibid.*

684 man. He loved his mother as every faithful son should. In fact, he loved her
[538] with an exceptionally deep filial love. But alas! How painful it must have
[837] been for him to learn that his mother, whom he so worshipped, had an illicit lover! His heart burst with grief and rage. Nika Bulat at once rushed to the adulterer's home; his eyes flashed with rage as he whipped out his dagger and plunged it into the lover's heart. Nika Bulat then hacked off his head and hands, and took these gory limbs and head to his mother, and staring at her for a moment as if he had gone mad, dropped them at her feet. On seeing her furious son and especially the gruesome sight before her, she burst into tears, but tears that only served to make Nika Bulat's blood boil with rage even still more violently. With one thrust of his dagger, his mother lay dying beside the head and hands she once so wrongfully loved to clasp. But that is not the end of the tragedy. Nika Bulat's sisters were present and witnessed all. They fell down on their knees, weeping bitterly on their mother's breast, as she bled and gasped. But Nika Bulat did not allow his sisters to weep. That same dagger was whipped out once again, and like a flash plunged into the heart of one of his sisters, and then into the heart of the other, thus putting an end to their sobs, sobs that were, in eyes of Nika Bulat, an approval of their mother's crime. For this great act of heroism Nika Bulat was admired by all and proclaimed the head of the village.[31]

[834] This abhorrence of sexual crimes is brought out further by the fact that any accidental touch of the bare hand of a strange woman is considered a violation, and both are regarded as "unclean."[32] Especially in dances all physical contact must be scrupulously avoided, no matter how small and crowded the room may be. Baddeley describes how the dancers curve in and out within a few inches of each other, but never is there even the slightest bodily contact, "the breach of this observance, even inadvertently, leading to many a fatal quarrel. A husband, brother or lover, looking on with jealous eye, would whip out his 'kinjal' at the mere suspicion of a touch..."[33] A further reflexion of this extreme sensitivity is the considerably large number of *adats* which make no distinction between mere contact and actual rape. In the Districts of Hyuraki, Usisha, and Mugn, for example, actual rape, attempted rape, and a mere suspicious touch or approach are all equally punished.[34]

684 838 Homosexuality is punished as severely as voluntary illicit relations between persons of the opposite sex. To mention but a few examples: in Hyuraki District, the two persons caught in the act may be killed on the spot by their relatives, or else, if spared, each must pay a fine of three oxen to the community, and both persons are banished for a year, not to mention other penalties;[35] in

[31] Cf. Dirr, AGKB, pp. 75 f.

[32] L'vov, "Domašnjaja i semjnaja žizn Dagestanskich gorcev Avarskago plemeni," SSKG, III (1870), p. 21.

[33] Baddeley, *op. cit.*, II, p. 13.

[34] Cf. "Adaty Darginskich Obščestv," SSKG, VII (1873), pp. 65, 91, 105.

[35] "Adaty Darginskich Obščestv," p. 92. To free one's self from a charge of homosexuality 40 conjurors are required just as in the case of murder *(ibid.)*.

unjust death penalty. (5) Finally, the adulteress was merely divorced; she lost her right to the *kebin*, while the *kalym* had to be returned to the husband. The adulterer was obliged to pay a fine.

Amputation of the adulteress' ears and nose is a punishment found in the *adats* of all Caucasians. It is interesting to note that a Hittite code (about 1350 B. C.) engraved on a stele has been dug up, which expressly legalized such mutilation in case of adultery.[65] This code may be based on a substratum of customary laws which are now preserved in the isolated *auls* of the Caucasus.

2. Motives

The main motives for punishing sexual offenses seem to be: (1) in case of defloration, the girl loses her value and consequently the family suffers a great economic loss;[66] (2) there is a serious danger of a stranger being born into the sacred sanctuary of the home and later treated as a legitimate member and even as head of the family (*supra*, p. 126).

3. Reports regarding Sexual Laxity of the Caucasians

In view of such severe penalties as we have described above, we cannot help being suspicious about some of the reports regarding laxity of morals among the mountain tribes of the Caucasus. The Kuban Cherkess are supposed to have formerly been proud of the fact that their wives attracted other men. Every woman had to have a lover to prove her true value.[67] Longworth's report, to mention but another example, contrasts the scrupulousness after marriage with "their unconstrained demeanor before marriage."[68] "The maidens of Circassia are allowed a latitude in their behaviour which is elsewhere unknown; not only do they talk and dance with the other sex, but when they please, they exercise their blandishments to an extent that to a stranger is no less perplexing than agreeable."[69] Then there are the many reports about public religious hetaerism. Interiano claims that at funerals of prominent personages a very strange sort of sacrifice takes place: a girl of 12 to 14 years of age is placed upon a skin of an ox that has just been slaughtered and in the presence of men and women a robust young man of the community must try to deflower her. After several failures, the young man promises to marry her (or makes some other promises), and then the girl usually consents.[70] There are also the reports about sexual hospitality, for example, in the "Relation du Sieur Ferrand médicin du Khan des Tatares, touchant la Crimée, les Tartares-Nogaies et ce qui se passe au serail du dit Khan,"[71] in *Voyage historiques et géographique dans les pays situé entre la Mer Caspienne par Edouard Barbier du Bocage et de Baert*, as well as in the

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[65] H. C. E. Zacharias, *Protohistory*, p. 258.
[66] *Supra*, pp. 126 f.
[67] Dirr, AGKB, pp. 81 f.
[68] Longworth, *A Year among the Circassians*, I, p. 286.
[69] Longworth, *op. cit.*, I, p. 216.
[70] Ladyženskij, FT, p. 183, Dirr's note.
[71] In *Recueil des Voyages au Nord*, Amsterdam, 1718.

8: Lužbetak E-4 (no date) 1951 RH1 Caucasia RH1

writings of the Arabs al-Mas'ûdî and Abu-El-Kasim. They claim that the father offers one of his daughters to his guest as a mere point of hospitality. Stählin[72] claimed that illegitimate children were treated the same as legitimate. On the other hand, a large number of authors, such as Struys, Lamberti,[73] Neumann,[74] and others, claim that the Cherkess women are extremely modest. The true solution to these conflicting reports is the one suggested by Ladyženskij.[75] "Den richtigsten Standpunkt nimmt in der Frage Garni ein (Reisen in den Ländern der asiatischen Türkei und des Kaukasus, 1854). Er betont die Keuschheit der freien Frauen und den Hetärismus der Sklavinnen." This is also Dirr's opinion.[76] In other words, the reports are true only to a certain extent: the freewomen are exceptionally modest, while the slaves exceptionally immodest, religious prostitution and sexual hospitality being restricted to slaves. Such conduct in regard to freewomen would be impossible considering the great economic loss the family would suffer from defloration, considering also the virginity test, and, finally, the fear of illegitimate children. On the other hand, defloration, virginity, and illegitimate children in the case of *slaves* would offer no serious difficulty.

We have a similar problem in regard to some of the Lesghians. As we have mentioned above, Herodotus wrote of the Lesghians that "they copulate in public as beasts are wont to do."[77] Przewalski reported that at Tsunta-Akhvakh unmarried couples were allowed to sleep together.[78] Baddeley confirms Przewalski's report: "It is the custom for a host to give his guest one of his daughters or some other girl to sleep with. The couple may ... do what they like provided the maidenhead remains intact; and even that depends on the fair one's goodwill. But should the guest so far forget himself as to force her, he will pay for it with his life. Those people think meanly of a girl who has never slept with an honoured guest."[79] Baddeley's guide, a native of Ossetia, "accepted this as a fact, and added that something of the same sort went on in certain of the older Cossack 'stanitsas' on the Terek, instancing Tchervlennaya."[80] Herodotus' report is useless, for we do not know exactly who is meant, but there is no reason to doubt Przewalski and Baddeley. However, we wish to stress that this is a custom found exclusively in Tsunta-Akhvakh and is, by no means, the picture of entire Daghestan. Tsunta-Akhvakh is only a *village* (in 1901 it had only 415 inhabitants), which constitutes an *exception*

[72] Jacob v. Stählin, *Nachrichten von Tschirkassien oder von dem Karbardinischen Lande*, 1771, referred to by Ladyženskij, FT, p. 185.

[73] Cf. Ladyženskij, *l. c.*

[74] Neumann, *Rußland und die Tscherkessen*, cf. Ladyženskij, *l. c.*

[75] Ladyženskij, *l. c.* Ladyženskij, "Zur Erforschung der Rechtsgewohnheiten, etc.," pp. 243 f.

[76] Ladyženskij, FT, p. 184. Cf. Castagné, "Le droit coutumier familial des montagnards du Caucase," p. 252: "Supposer que le montagnard adighé pût proposer sa fille ou sa femme a un hôte, serait comprehensible si la femme des montagnards avait été esclave, mais cela n'étant pas, une supposition de ce genre doit être considéré comme sans fondement aucun."

[77] Cited by Potocki, *Voyage dans les steps d'Astrakhan et du Caucase*, I, p. 240; to which Potocki adds, "Celle de quelques vallées du Caucase sont encore très libres."

[78] Kovalevskij, *Zakon*, II, p. 189.

[79] Baddeley, *op. cit.*, II, pp. 13 f.

[80] Baddeley, *op. cit.*, *II*, p. 14.

to the general rule. This village is inhabited by a degraded Avarian tribe or, as Baddeley suggests, "perhaps the remnant of an older race absorbed by the latter."[81] But even here, among this "degraded" Avarian tribe, the girl "might only be touched from waist upwards; in Shamyl's time a too-ardent lover was stabbed to death, for a breach of this adat, by his own beloved, and the deed was not only not punished but even greatly applauded."[82]

There are also similar conflicting reports regarding the neighbouring mountain tribes of Georgia. Klaproth, for instance, speaking of the Tushi, says, "Le commerce illicite entre les deux sexes est très rare chez eux . . ."[83] Klaproth's claim is in full accord with the severe penalties for fornication as described by Baddeley: "If a girl was unchaste, she was set upon a donkey, face to tail, and carried through the 'aoul', spat upon and jeered at." He goes on to say that "if a girl had a child, she was driven out of the community and the child killed, unless some charitable person took pity on it. A young man could not marry a girl once seduced by another man, but an old man or widower might."[84] Other reports, however, maintain the very contrary and say that the mountain tribes of Georgia are extremely lax. A few distinctions will, I believe, clarify these contradictions. The Khevsurs[85] and the Pshavs[86] have an institution called *tsatsali*, that is, "brother" or "sister" but actually legal lovers. It is only freedom with non-*tsatsalis* and pregnancy that seems to have been discountenanced by these tribes. As long as the girl restricted her relations to her *tsatsali* and avoided pregnancy she was "chaste." One of the main reasons for the relatively late marriage age among the mountain tribes of Georgia (*supra*, p. 67) is this institution.[87]

4. Relation of Penalties for Sexual Offenses to the Economic and Social Organization of the Caucasian Mountaineers

All that we have said about the severity of the penal laws of the North Caucasians is in perfect harmony with their general economic and social organization. It is a known fact that lower hunters discountenance sexual liberty more than the higher hunters; the lower agrarians more than the higher; the pastoralists more than the agrarians; the father-right family more than the mother-right.[88] Our North Caucasians have a strongly pastoral and father-right organization.

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[81] Baddeley, *op. cit.*, II, p. 13.

[82] *ibid.* Baddeley's source is Komarov's article "Adaty i sudoproizvodstvo po nim," SSKG, I, p. 57. Dubrovin, *Istorija*, I, i, p. 564 has the incident too, but he fails to mention his source.

[83] Klaproth, *Voyage au Mont Caucase et en Géorgie*, II, p. 72.

[84] Baddeley, *op. cit.*, I, p. 237.

[85] Kovalevskij, "La famille matriarcale au Caucase," *L'Anthropologie*, IV (1893), p. 273.

[86] Makalatija, "Iz starogo narodnogo byta Pšavov," SE, 1938, No. 1, p. 98.

[87] Since the *tsatsali* in Pshavia are always chosen from among relatives and marriage is possible only between non-relatives, marriage would mean that the two would have to separate and love another person, a fact that makes them reluctant to marry. In fact, they sometimes do not marry at all. For a detailed exposition of the institution, see Makalatija, *op. cit.*, pp. 98—102.

[88] H. Günther, *Formen und Urgeschichte der Ehe*, p. 90.